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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,377	08/15/2006	Theodor Morel Fishler	0-05-165	9287
42009	7590	03/02/2010	EXAMINER	
KEVIN D. MCCARTHY ROACH BROWN MCCARTHY & GRUBER, P.C. 424 MAIN STREET 1920 LIBERTY BUILDING BUFFALO, NY 14202			PIHONAK, SARAH	
			ART UNIT	PAPER NUMBER
			1627	
			MAIL DATE	DELIVERY MODE
			03/02/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/552,377	Applicant(s) FISHLER, THEODOR MOREL	
	Examiner SARAH PIHONAK	Art Unit 1627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-5 and 9-20.
Claim(s) withdrawn from consideration: 21-23.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/SREENI PADMANABHAN/
Supervisory Patent Examiner, Art Unit 1627

/S. P./
Examiner, Art Unit 1627

Applicant's amendments filed on 2/16/2010 have been fully considered but fail to place the application in condition for allowance for the following reasons: Olson teaches a biocide composition comprised of halogen bleach agents such as trichlorocyanuric acid, and inorganic compounds, such as sodium metasilicate, orthosilicate, and borates such as sodium and potassium borates. While Olson does not explicitly teach that the inorganic component forms a low-melting glass when heated to temperatures between 300-800 C, as the composition contains the same inorganic components, it would have been expected that a low-melting glass would also have been formed when heated to these temperatures. Jones et. al. teaches a biocide composition comprised of halogenated hydantoins, along with flocculants, which can be in the form of tablets, and sticks, As both Olson and Jones et. al. teach biocide compositions, it would have been obvious for one of ordinary skill in the art to add oxidants such as halogenated hydantoins and flocculants such as aluminum sulfate to the composition taught by Olson. Therefore, the rejection under 35 USC 103(a) was proper and is maintained for reasons of record.

The Applicant has argued that Olson does not teach mixtures of inorganic compounds, or that the inorganic mixture acts as a fire-retardant. This is not persuasive, as Olson teaches that a variety of inorganic compounds, such as those claimed, can be used in the composition, and teaches an example of a mixture. Additionally, it is a property of the mixture of boric compounds and alkaline silicates to form a low-melting glass at temperatures between 300-800 C, as claimed. As such, it would have been expected that such a mixture would function as a fire-retardant for the biocide. While it is acknowledged that Olson does not explicitly teach that the inorganic mixtures are non-comburant, the inorganic compounds and mixtures are taught.

The Applicant has argued that Olson teaches layers of inorganic and organic compounds which surround the active biocide agent, and that the instant claims do not recite layers, but a mixture of inorganic compounds and the biocide agent. However, as discussed supra, the inorganic mixture forms a glass over the biocide when heated from 300-800 C; therefore, the claims do not exclude layers. Additionally, the claims do not exclude organic compounds or organic layers, as they contain comprising language. As Olson teaches a biocide composition comprised of trichlorocyanuric acid, mixtures of inorganic compounds, such as sodium silicates and borates, in the claimed amount ranges, the claims are rendered obvious over Olson, in view of Jones et. al.